IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

WP(C).No. 27482 of 2006(V)

CC.1349/2005 of J.M.F.C.,KARUNAGAPPALLY

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PETITIONER:

K.P.GOPINATHAN PILLAI,
KALPAKAM, PADA SOUTH, KARUNAGAPPALLY,
KOLLAM. (EMPLOYED AT POST BOX 21404, DOHA,
QUATER.), REPRESENTED BY HIS POWER OF ATTORNEY
HOLDER VIJAYAN PILLAI K.P., KOKKARIKKAL PUTHEN
VEEDU, VADAKKUMTHALAMURI, KARUNAGAPPALLY.

BY ADV. SRI.M.BALAGOVINDAN
SRI.M.R.SASITH

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
STATE PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. B.USHA, W/O. V.ANIL,
VADAKKUMTHALA EAST POST, KARUNAGAPPALLY.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR
GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC NO.27482 OF 2006

PETITIONER'S EXHIBITS:-

EXT.P1:- TRUE COPY OF THE POWER OF ATTORNEY DT.09-11-2005.

EXT.P2:- TRUE COPY OF THE PLAINT O.S.457/2005 BEFORE THE SUBORDINATE JUDGES COURT, KOLLAM, ON 4-11-2005.

EXT.P3:- TRUE COPY OF THE COMPLAINANT FILED U/S.200 CR.P.C. FOR THE ALLEGED OFFENCE COMMITTED UNDER SECTION 138 & 142 OF THE NEGOTIABLE INSTRUMENTS ACT.

EXT.P4:- TRUE COPY OF THE F.I.R141/2006 OF CHAVARA POLICE STATION DT.15/2/2006.

//true copy//

R. BASANT, J.

CRL.W.P.C.NO.27482 OF 2006

Dated this the 14th day of December, 2006

JUDGMENT

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. It is submitted at the Bar that the petitioner has now entered appearance through counsel who was duly authorised by the petitioner himself to appear before the court below. The proceedings are pending before the court below. The petitioner has not appear personally so far. A non-bailable warrant of arrest is pending against him.

2. The petitioner claims to be abroad. It is claimed that he is expected to return to India on 26/12/2006. He apprehends that he may be arrested and detained in custody. He wants to appear before the learned Magistrate to seek bail. His apprehension is that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He has a grievance that a non-bailable warrant is issued against him without and before ensuring that he has been duly served. A copy of the order

sheet has been placed before me. I do note that the non-bailable warrant has been issued even before the learned Magistrate recorded the satisfaction that the summons has been duly served on him. That obviously was not proper. Be that as it may, the short request now made by the petitioner is that his application for bail may be considered by the learned Magistrate on merits, in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339). I have no reason to assume that the learned Magistrate would not consider the application for bail on merits in accordance with law and expeditiously.

3. The learned counsel submits that the petitioner wants to file an application for exemption from personal appearance. I fail to understand why he has not done the same so far. The mere pendency of a warrant issued by the learned Magistrate even before the accused was not served is certainly not a ground for the learned Magistrate not to consider the application for exemption under Section 205 Cr.P.C. The pendency of a non-

bailable warrant cannot certainly be reckoned as sufficient reason not to consider the application under Section 205 Cr.P.C or to reject such application.

4. Having said so, I am satisfied that this writ petition now deserves only to be dismissed. The petitioner shall be at liberty to apply for exemption from personal appearance and to be represented by counsel. The petitioner shall also be entitled to appear before the learned Magistrate and apply for bail. The learned Magistrate must consider such applications on merits, in accordance with law and expeditiously. Needless to say that the application for bail must be considered on the date of appearance of the petitioner itself.

Hand over copy of this judgment to the learned counsel for the petitioner.

(R. BASANT, JUDGE)

jsr